

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ADRIAN ALEXANDER ORTIZ-FLORES, a
minor by and through his guardian, Terry Ortiz;
and TERRY ORTIZ, as an individual consumer
and on behalf of others similarly situated,

Plaintiff,

v.

MCNEIL-PPC, INC. a New Jersey corporation,
Defendant.

Civil No. 07cv0678-BEN (CAB)

**SCHEDULING ORDER REGULATING
DISCOVERY AND OTHER PRETRIAL
PROCEEDINGS**

(Fed. R. Civ. P. 16)

(Local Rule 16.1)

(Fed. R. Civ. P. 26)

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court held a Status Conference on January 25, 2008. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be **filed** on or before **February 8, 2008**.

2. Any motion for class certification must be **FILED** on or before **April 28, 2008**. Please be advised that counsel for the moving party must obtain a motion hearing date from the law clerk for the judge who will hear the motion. Be further advised that the period of time between the date you request a motion date and the hearing date may vary from one judge to another. Please plan accordingly. For example, you may need to contact the judge's law clerk in advance of the motion cut-off to assess the availability of the Court's calendar. **Failure of counsel to timely request a motion date may result in the motion not being heard.**

1 Briefs or memoranda in support of or in opposition to any pending motion shall not
 2 exceed twenty-five (25) pages in length without leave of the judge who will hear the motion. No reply
 3 memorandum shall exceed ten (10) pages without such leave of court. Briefs and memoranda exceeding
 4 ten (10) pages in length shall have a table of contents and a table of authorities cited.

5 3. On or before **June 27, 2008**, all parties shall exchange with all other parties a list of all
 6 expert witnesses expected to be called at trial. The list shall include the name, address, and phone
 7 number of the expert and a brief statement identifying the subject areas as to which the expert is
 8 expected to testify. The list shall also include the normal rates the expert charges for deposition and trial
 9 testimony. On or before **July 11, 2008**, any party may supplement its designation in response to any
 10 other party's designation so long as that party has not previously retained an expert to testify on that
 11 subject.

12 4. Each expert witness designated by a party shall prepare a written report to be provided to
 13 all other parties **no later than September 12, 2008**, containing the information required by Fed. R. Civ.
 14 P. 26(a)(2)(A) and (B).

15 **Except as provided in the paragraph below, any party that fails to make these disclosures**
 16 **shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed**
 17 **at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by**
 18 **Fed. R. Civ. P. 37(c).**

19 5. Any party, through any expert designated, shall in accordance with Fed. R. Civ. P.
 20 26(a)(2)(C) and Fed. R. Civ. P. 26(e), supplement any of its expert reports regarding evidence intended
 21 solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted
 22 by another party. Any such supplemental reports are due on or before **September 26, 2008**.

23 6. All discovery, including expert discovery, shall be completed on or before **October 31,**
 24 **2008**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure
 25 must be initiated a sufficient period of time in advance of the cut-off date, so *that it may be completed* by
 26 the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal
 27 Rules of Civil Procedure. All discovery motions must be filed within 30 days of the service of an
 28 objection, answer or response which becomes the subject of dispute or the passage of a discovery due

1 date without response or production, and only after counsel have met and conferred and have reached
 2 impasse with regard to the particular issue.

3 7. All motions, other than motions to amend or join parties, or for class certification, or
 4 motions in limine, shall be **FILED** on or before **November 14, 2008**.

5 Please be advised that counsel for the moving party must obtain a motion hearing date from the
 6 law clerk of the judge who will hear the motion. Be further advised that the period of time between the
 7 date you request a motion date and the hearing date may vary from one judge to another. Please plan
 8 accordingly. For example, you may need to contact the judge's law clerk in advance of the motion cut-
 9 off to assess the availability of the Court's calendar. **Failure of counsel to timely request a motion**
 10 **date may result in the motion not being heard.**

11 8. Briefs or memoranda in support of or in opposition to any pending motion shall not
 12 exceed twenty-five (25) pages in length without permission of the judge or magistrate judge who will
 13 hear the motion. No reply memorandum shall exceed ten (10) pages without leave of the judge or
 14 magistrate judge who will hear the motion.

15 9. Pursuant to Local Rule 7.1(f)(1), when filing a Motion for Summary Judgment and/or
 16 Adjudication, Defendants **shall** file, and serve on Plaintiff, a separate statement setting forth plainly and
 17 concisely all material facts which they contend are undisputed. Each of the material facts stated shall be
 18 followed by a reference to the supporting evidence. Further, Plaintiff **shall** file, and serve on
 19 Defendants, a separate statement that responds to each of the material facts contended by Defendants to
 20 be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed.
 21 The statement also shall set forth plainly and concisely any other material facts that the opposing party
 22 contends are disputed. Each material fact contended by the opposing party to be disputed shall be
 23 followed by a reference to the supporting evidence.

24 10. A Mandatory Settlement Conference shall be conducted on **May 1, 2008**, at **2:00 p.m.** in
 25 the chambers of Magistrate Judge Cathy Ann Bencivengo. Counsel shall submit **confidential** settlement
 26 statements **directly to chambers** no later than **April 24, 2008**. Each party's settlement statement shall
 27 set forth the party's statement of the case, identify controlling legal issues, concisely set out issues of
 28 liability and damages, and shall set forth the party's settlement position, including the last offer or

1 demand made by that party, and a separate statement of the offer or demand the party is prepared to
 2 make at the settlement conference. **Settlement conference briefs shall not be filed with the Clerk of**
 3 **the Court, nor shall they be served on opposing counsel.**

4 11. Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for
 5 insured defendants with full and unlimited authority¹ to negotiate and enter into a binding settlement, as
 6 well as the principal attorney(s) responsible for the litigation, must be present and legally and factually
 7 prepared to discuss and resolve the case at the mandatory settlement conference. Retained outside
 8 corporate counsel shall not appear on behalf of a corporation as the party who has the authority to
 9 negotiate and enter into a settlement. Failure to attend the conference will be considered grounds for
 10 sanctions.

11 12. The parties' Memoranda of Contentions of Fact and Law in compliance with Local Rule
 12 16.1(f)(2) shall be filed with the Clerk of the Court, and copies served on all other parties **and lodged**
 13 **with the Chambers of the Honorable Roger T. Benitez** on or before **February 23, 2009**.

14 13. All parties or their counsel shall also fully comply with the Pretrial Disclosure
 15 requirements of Fed. R. Civ. P. 26(a)(3) on or **before February 23, 2009**. **Failure to comply with**
 16 **these disclosures requirements could result in evidence preclusion or other sanctions under Fed.**
 17 **R. Civ. P. 37.**

18 14. Counsel shall meet together and take the action required by Local Rule 16.1(f)(4) on or
 19 before **March 2, 2009**. At this meeting, counsel shall discuss and attempt to enter into stipulations and
 20 agreements resulting in simplification of the triable issues. Counsel shall exchange copies and/or display
 21 all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance
 22 with Local Rule 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial
 23 Disclosures under Fed. R. Civ. P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed
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25 ¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to
 26 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.
 27 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have
 28 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc.,
 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority
 to attend the conference includes that the person's view of the case may be altered during the face to face
 conference. Id. at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc.,
 270 F.3d 590 (8th Cir. 2001).

1 pretrial conference order.

2 15. The proposed final pretrial conference order, including objections they have to any other
3 parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the Clerk
4 of the Court on or before **March 9, 2009**, and shall be in the form prescribed in and in compliance with
5 Local Rule 16.1 (f)(6). Counsel shall also bring a court copy of the pretrial order to the pretrial
6 conference.

7 16. The final pretrial conference shall be held before the **Honorable Roger T. Benitez**,
8 United States District Court Judge, on **March 16, 2009**, at **10:30 a.m.**

9 17. Trial Date will be scheduled by the Court at the Pretrial Conference.

10 18. The dates and times set forth herein will not be modified except for good cause shown.

11 19. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case
12 hereafter.

13 DATED: January 25, 2008

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16 **CATHY ANN BENCIVENGO**
17 United States Magistrate Judge
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